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12 *TROVE BRANDS, LLC d/b/a THE BLENDERBOTTLE COMPANY*

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 TROVE BRANDS, LLC d/b/a THE
16 BLENDERBOTTLE COMPANY, a Utah
limited liability company,

17 Plaintiff,

18 v.

19 SYNERGY CHC CORP. d/b/a FLAT
20 TUMMY CO., a Nevada corporation

21 Defendant.

Case No.: 2:21-cv-00624

COMPLAINT

Jury Demand

22 Plaintiff Trove Brands LLC, d/b/a The BlenderBottle Company (“BlenderBottle®”)
23 hereby complains of Synergy CHC Corp., d/b/a Flat Tummy Co. (“Flat Tummy”) and alleges as
24 follows:

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JURISDICTION AND VENUE

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2 1. This Court has original subject matter jurisdiction over the claims in this action
3 that relate to patent infringement, trade dress infringement, false designation of origin, and federal
4 unfair competition pursuant to 35 U.S.C. §§ 271 and 281, 28 U.S.C. §§ 1331 and 1338, and 15
5 U.S.C. §§ 1116, 1121(a), and 1125(a), as these claims arise under the laws of the United States.
6 The Court has supplemental jurisdiction over the claims that arise under state statutory and
7 common law pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the
8 federal claims that they form part of the same case or controversy and derive from a common
9 nucleus of operative facts.

10 2. This Court has personal jurisdiction over Defendant Flat Tummy because Flat
11 Tummy is incorporated in this judicial district. Defendant also has a continuous, systematic, and
12 substantial presence within this judicial district. For example, Defendant has been selling and
13 offering for sale infringing products in this judicial district, and committing acts of infringement
14 in this judicial district, including but not limited to, selling infringing products to consumers
15 and/or retailers in this district and selling into the stream of commerce knowing such products
16 would be sold in Nevada and this district. These acts form a substantial part of the events or
17 omissions giving rise to BlenderBottle®'s claims.

18 3. Upon information and belief, venue is proper in this judicial district under 28
19 U.S.C. § 1391 because Flat Tummy is incorporated in this judicial district.

THE PARTIES

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21 4. Plaintiff Trove Brands, LLC doing business as the BlenderBottle Company is a
22 limited liability company organized and existing under the laws of the State of Utah, with its
23 principal place of business located at 250 South 850 East, Lehi, Utah 84043.

24 5. BlenderBottle® is informed and believes, and, based thereon, alleges that
25 Defendant Flat Tummy is a Nevada corporation with an address of 2616 Willow Wren Dr., North
26 Las Vegas, Nevada 89084.

GENERAL ALLEGATIONS

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28 6. BlenderBottle® revolutionized the way supplements are mixed and consumed.

1 Through the tireless efforts of its designers and engineers over nearly two decades,
2 BlenderBottle® has pioneered innovative technology and path-breaking designs to create
3 premium products that help simplify everyday life. Available in more than 90 countries
4 worldwide and in over 60,000 retail locations, BlenderBottle®'s shakers have become the go-to
5 products for outdoor enthusiasts, gym goers, serious protein drinkers and more. Products
6 embodying BlenderBottle®'s proprietary designs and technology have been lauded by consumers
7 and the media, including *Good Morning America*, *Reader's Digest*, *Self*, *the Today Show*, *Men's*
8 *Fitness*, and others.

9 7. BlenderBottle® protects its substantial investment in innovation and design from
10 imitators with its intellectual property rights.

11 8. On December 31, 2013, the United States Patent and Trademark Office
12 ("USPTO") duly and lawfully issued United States Design Patent No. D696,551 (the "D551
13 Patent"), titled "BOTTLE LID HAVING INTEGRATED HANDLE." BlenderBottle® is the
14 exclusive licensee of the D551 Patent and has been granted all rights thereunder, including the
15 right and standing to enforce the D551 Patent. A true and correct copy of the D551 Patent is
16 attached hereto as **Exhibit 1**.

17 9. On February 2, 2016, the USPTO duly and lawfully issued United States Design
18 Patent No. D748,478 (the "D478 Patent"), titled "CLOSURE FOR A CONTAINER."
19 BlenderBottle® is the exclusive licensee of the D478 Patent and has been granted all rights
20 thereunder, including the right and standing to enforce the D478 Patent. A true and correct copy
21 of the D478 Patent is attached hereto as **Exhibit 2**.

22 10. On June 12, 2018, the USPTO duly and lawfully issued United States Design
23 Patent No. D820,038 (the "D038 Patent"), titled "LID FOR A CONTAINER." BlenderBottle®
24 is the exclusive licensee of the D038 Patent and has been granted all rights thereunder, including
25 the right and standing to enforce the D038 Patent. A true and correct copy of the D038 Patent is
26 attached hereto as **Exhibit 3**.

27 11. On June 12, 2018, the USPTO duly and lawfully issued United States Design
28 Patent No. D697,798 (the "D798 Patent"), titled "CONTAINER." BlenderBottle® is the

1 exclusive licensee of the D798 Patent and has been granted all rights thereunder, including the
2 right and standing to enforce the D798 Patent. A true and correct copy of the D798 Patent is
3 attached hereto as **Exhibit 4**.

4 12. On June 12, 2018, the USPTO duly and lawfully issued United States Patent No.
5 10,165,877 (the “’877 Patent”), titled “STACKABLE CONTAINER SYSTEM.”
6 BlenderBottle® is the exclusive licensee of the ’877 Patent and has been granted all rights
7 thereunder, including the right and standing to enforce the ’877 Patent. A true and correct copy
8 of the ’877 Patent is attached hereto as **Exhibit 5**.

9 13. Defendant manufactures, uses, sells, offers for sale, and/or imports into the United
10 States shakers that have infringed BlenderBottle®’s patent rights, including the D551 Patent,
11 D478 Patent, D038 Patent, D798 Patent, and ’877 Patent (collectively the “Asserted Patents”).

12 14. BlenderBottle® manufactures and sells shakers bearing a distinctive trade dress in
13 the overall design of its shaker bottle (the “Bottle Trade Dress”). An example of BlenderBottle®’s
14 Bottle Trade Dress is depicted below.



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24 15. The Bottle Trade Dress includes: a tall cylindrical form; a top lid element with a
25 tall shoulder; a recessed domed top from which a conical spout protrudes on one side and a pair
26 of brackets on the opposing side; and the brackets host a pivoting arm containing a circular spout
27 closure element.

28 16. As a result of BlenderBottle®’s widespread use and display of the Bottle Trade

Dress in association with its shaker bottles, (a) the public has come to recognize and identify shakers bearing the Bottle Trade Dress as emanating from BlenderBottle®, (b) the public recognizes that shakers bearing the Bottle Trade Dress constitute high quality products that conform to the specifications created by BlenderBottle®, and (c) the Bottle Trade Dress has established strong secondary meaning and extensive goodwill.

17. The Bottle Trade Dress is not functional. The design features embodied by the Bottle Trade Dress are not essential to the function of the product. A container that allows one to combine powders and liquids and that also serves as drink dispenser can have many different forms and shapes. The Bottle Trade Dress is not in its particular shape because it works better in that shape. There are numerous alternative shapes and structures that allow a consumer to combine powders and liquids and use them as a drink dispenser. Examples of commercially available alternatives are depicted in the table below:

 <p><i>“PUSHLIMITS Designed by Artoid” product</i></p>	 <p><i>“Rubbermaid® SHAKER BOTTLE” product</i></p>
 <p><i>“Contigo® LEAK- PROOF SHAKER BOTTLE” product</i></p>	 <p><i>“BluePeak Shaker Bottle” product</i></p>

1 18. Further, the design features of the Bottle Trade Dress are not comparatively simple
2 or inexpensive to manufacture because the elements are complex. For example, the lid shown in
3 the Bottle Trade Dress is more expensive to manufacture than other lids. The design features of
4 the Bottle Trade Dress do not affect the quality of the product. The design of the Bottle Trade
5 Dress is not a competitive necessity.

6 19. The Bottle Trade Dress is an invaluable asset essential to BlenderBottle®'s
7 success and represents the design of its signature products.

8 20. Subsequent to BlenderBottle®'s use and adoption of the Bottle Trade Dress,
9 Defendant has developed, manufactured, imported, advertised, and/or sold shaker bottles that use
10 trade dress that is confusingly similar to the Bottle Trade Dress.

11 21. Defendant manufactures, uses, sells, offers for sale, promotes, advertises and/or
12 imports into the United States the following shaker bottles which infringe BlenderBottle®'s
13 intellectual property rights (the "Flat Tummy Shaker Bottles"):



25 22. On February 27, 2020, BlenderBottle® sent Defendant a cease and desist letter
26 demanding that Defendant cease selling shaker bottles that infringe the D551 Patent, D478 Patent,
27 D038 Patent, and the Bottle Trade Dress. A true and correct copy of this letter is attached as
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Exhibit 6.

23. Despite BlenderBottle®'s letters and subsequent correspondences seeking to resolve this dispute without litigation, Defendant has continued to sell at least Flat Tummy Shaker Bottle II.

24. BlenderBottle® is informed and believes, and based thereon alleges that Defendant has intended to blatantly copy BlenderBottle®'s proprietary designs, and pass off its goods as BlenderBottle®'s high quality products to misappropriate the immense goodwill that BlenderBottle® has spent enormous time, effort, and expense to cultivate in the marketplace. Defendant's use of the Bottle Trade Dress in commerce is likely to cause confusion, cause mistake, and to deceive as to an affiliation, connection, or association of Defendant and/or its products with BlenderBottle®, when there is none.

25. Defendant's acts complained of herein have caused BlenderBottle® to suffer irreparable injury to its business. BlenderBottle® will continue to suffer substantial loss and irreparable injury unless and until Defendant is enjoined from its wrongful actions complained of herein.

26. BlenderBottle® is informed and believes, and on that basis alleges that Defendant's acts complained of herein are willful and deliberate.

FIRST CLAIM FOR RELIEF

(Patent Infringement)
(35 U.S.C. § 271)

27. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1-26 of this Complaint as if set forth fully herein.


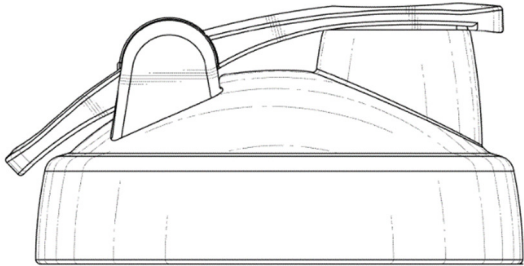
28. This is a claim for patent infringement under 35 U.S.C. § 271.


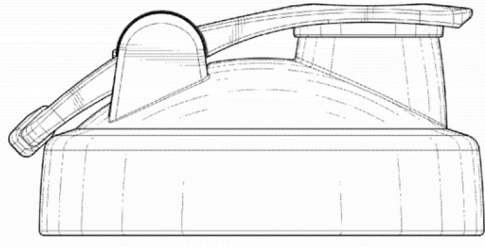

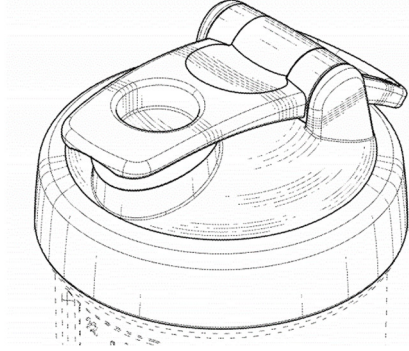
29. Flat Tummy, through its agents, employees, and/or servants has knowingly, intentionally, and willfully infringed the '877 Patent either literally or under the doctrine of equivalents, through for example, the manufacture, use, sale, offer for sale, and/or importation into the United States of, at least, the Flat Tummy Shaker Bottles.

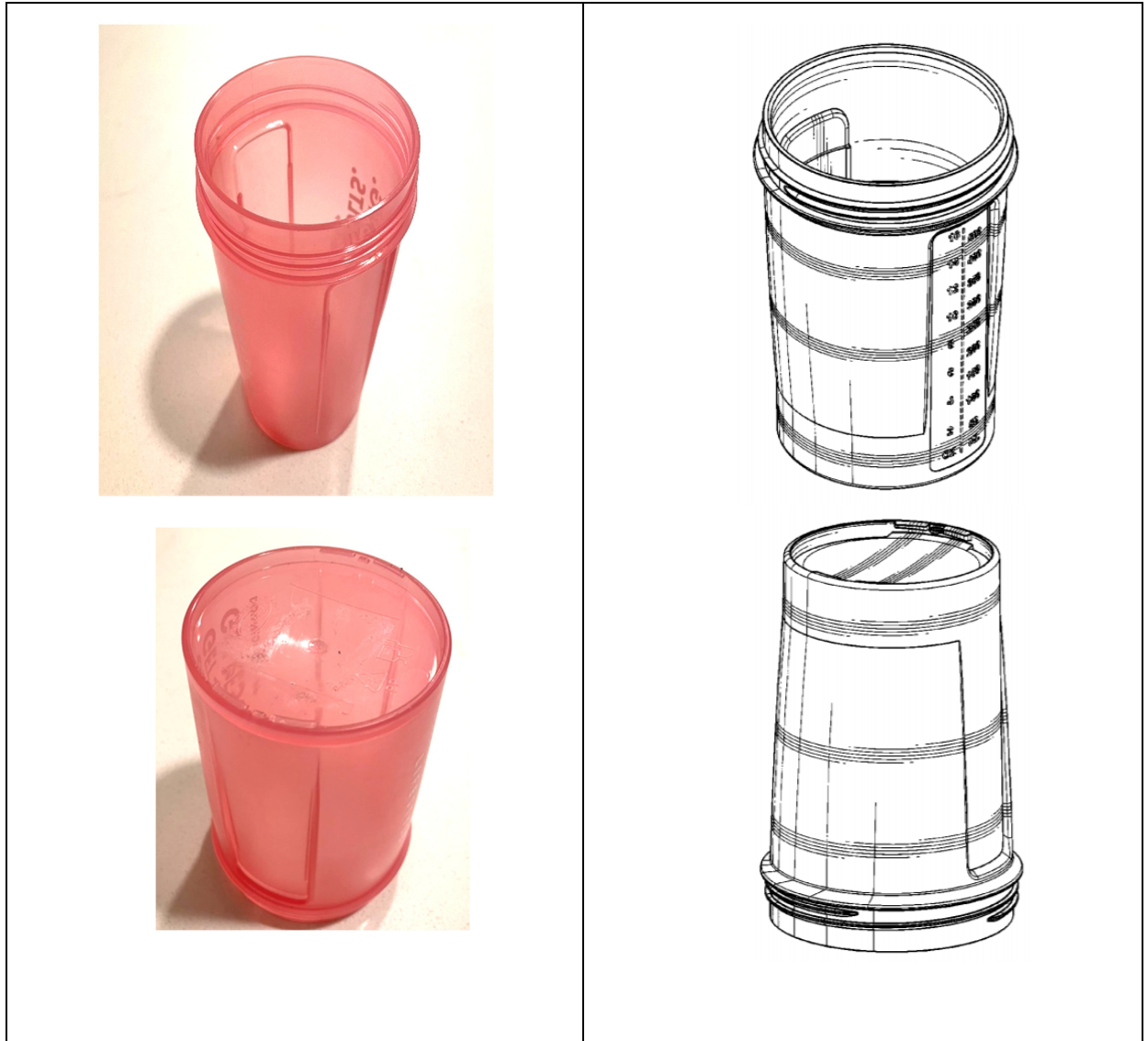
30. The Flat Tummy Shaker Bottles infringe at least Claim 1 of the '877 Patent as

shown in the claim chart attached hereto as **Exhibit 7**.

31. Defendant, through its agents, employees and/or servants has knowingly, intentionally, and willfully infringed the D551 Patent, the D478 Patent, the D798 Patent, and the D038 Patent by making, using, selling, offering for sale, and/or importing products, including the Flat Tummy Shaker Bottles that have designs that infringe these patents. For example, the side-by-side visual comparison of: (1) the D551 Patent, D478 Patent, and D038 Patent and the lid of Defendant's Flat Tummy Shaker Bottle I, and (2) the D798 Patent and the container of Defendant's Flat Tummy Shaker Bottle I, shown below establishes that in the eye of the ordinary observer, giving such attention as a purchaser usually gives, the designs in Defendant's Flat Tummy Shaker Bottles are substantially the same as the claimed designs of the D551 Patent, D478 Patent, D038 Patent, and D798 Patent because the resemblance is such as to deceive such an observer inducing him to purchase one supposing it to be the other. As a result, Defendant infringes the D551 Patent, D478 Patent, D038 Patent, and D798 Patent.

Lid for Flat Tummy's Shaker Bottle I	U.S. Design Patent No. D696,551
	

<p>Lid for Flat Tummy's Shaker Bottle I</p>	<p>U.S. Design Patent No. D748,478</p>
	 <p><i>Fig. 5</i></p>
<p>Lid for Flat Tummy's Shaker Bottle I</p>	<p>U.S. Design Patent No. D820,038</p>
	
<p>Flat Tummy's Shaker Bottle II</p>	<p>U.S. Design Patent No. D697,798</p>



32. BlenderBottle® is informed and believes, and thereon alleges that Defendant knew of the D551 Patent, D478 Patent, and D038 Patent at least as early as February 2020, when BlenderBottle® sent a cease and desist letter to Defendant notifying it of the D551 Patent, D478 Patent, and D038 Patent.

33. As a direct and proximate result of Defendant's acts of infringement, Defendant has derived and received gains, profits, and advantages in an amount that is not presently known to BlenderBottle®.

34. Pursuant to 35 U.S.C. § 284, BlenderBottle® is entitled to damages for Defendant's infringing acts and treble damages together with interests and costs as fixed by this Court.

35. Pursuant to 35 U.S.C. § 285, BlenderBottle® is entitled to reasonable attorneys' fees for the necessity of bringing this claim in this exceptional case.

36. Pursuant to 35 U.S.C. § 289, BlenderBottle® is entitled to Defendant's total profits from Defendant's infringement of the D551 Patent, D478 Patent, D038 Patent, and D798 Patent.

SECOND CLAIM FOR RELIEF

(Trade Dress Infringement)
(15 U.S.C. § 1125(a))

37. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1-36 of this Complaint as if set forth fully herein.

38. This is a claim for trade dress infringement under 15 U.S.C. § 1125(a).

39. Subsequent to BlenderBottle®'s use and adoption of the Bottle Trade Dress, and the development of secondary meaning in that trade dress, Defendant has developed, manufactured, imported, advertised, and/or sold products, including the Flat Tummy Shaker Bottle I, that uses trade dress that is confusingly similar to the Bottle Trade Dress. An example of Defendant's infringing use of the Bottle Trade Dress is shown below:

Bottle Trade Dress:



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Infringing Bottle:

40. Defendant's use of the Bottle Trade Dress in connection with its products is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with BlenderBottle®.

41. BlenderBottle® is informed and believes, and based thereon alleges, that Defendant infringed BlenderBottle®'s trade dress rights with the intent to unfairly compete with BlenderBottle®, to trade upon BlenderBottle®'s reputation and goodwill by causing confusion and mistake among customers and the public, and to deceive the public into believing that Defendant's products are associated with, sponsored by, originated from, or are approved by BlenderBottle®, when they are not, resulting in a loss of reputation in, and mischaracterization of, BlenderBottle®'s products and its brand, damaging its marketability and saleability.

42. Defendant's activities constitute willful and intentional infringement of BlenderBottle®'s trade dress rights in total disregard of BlenderBottle®'s proprietary rights, and were done despite Defendant's knowledge that use of the Bottle Trade Dress was and is in direct contravention of BlenderBottle®'s rights.

43. BlenderBottle® is informed and believes, and thereon alleges, that Defendant has derived and received, and will continue to derive and receive, gains, profits, and advantages from Defendant's trade dress infringement in an amount that is not presently known to BlenderBottle®. By reason of Defendant's actions, constituting trade dress infringement, BlenderBottle® has been

1 damaged and is entitled to monetary relief in an amount to be determined at trial.

2 44. Pursuant to 15 U.S.C. § 1117, BlenderBottle® is entitled to recover (1)
3 Defendant's profits, (2) any damages sustained by BlenderBottle®, and (3) the costs of the action.
4 In assessing damages, the Court may enter judgment up to three times actual damages, and in
5 awarding profits, the Court may in its discretion enter judgment for such sum as the court shall
6 find to be just, according to the circumstances of the case. The Court may also award
7 BlenderBottle® its reasonable attorneys' fees for the necessity of bringing this claim in this
8 exceptional case.

9 45. Due to Defendant's actions, constituting trade dress infringement, BlenderBottle®
10 has suffered great and irreparable injury, for which BlenderBottle® has no adequate remedy at
11 law.

12 46. Defendant will continue to infringe BlenderBottle®'s trade dress rights to the great
13 and irreparable injury of BlenderBottle®, unless and until Defendant is enjoined by this Court.

14 **THIRD CLAIM FOR RELIEF**

15 (False Designation of Origin, Passing Off, & Federal Unfair Competition)
16 (15 U.S.C. § 1125(a))

17 47. BlenderBottle® repeats and re-alleges the allegations of paragraphs 1-46 of this
18 Complaint as if set forth fully herein.

19 48. This is a claim for unfair competition and false designation of origin arising under
20 15 U.S.C. § 1125(a).

21 49. Defendant's use of the Bottle Trade Dress, without BlenderBottle®'s consent,
22 constitutes false designation of origin, false or misleading description of fact, or false or
23 misleading representation of fact, which is likely to cause confusion, or to cause mistake, or to
24 deceive as to the affiliation, connection, or association of such entity with another entity, or as to
25 the origin, sponsorship, or approval of its goods or commercial activities by another entity in
26 violation of 15 U.S.C. § 1125(a).

27 50. Defendant's use of the Bottle Trade Dress, without BlenderBottle®'s consent,
28 constitutes a false designation of origin, false or misleading description of fact, or false or

misleading representation of fact, which in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of its products or commercial activities in violation of 15 U.S.C. § 1125(a).

51. BlenderBottle® is informed and believes, and based thereon alleges that Defendant's acts of false designation of origin, passing off, and unfair competition have been willful and without regard to BlenderBottle®'s rights.

52. Pursuant to 15 U.S.C. § 1117, BlenderBottle® is entitled to recover (1) Defendant's profits, (2) any damages sustained by BlenderBottle®, and (3) the costs of the action. In assessing damages, the Court may enter judgment up to three times actual damages, and in awarding profits, the Court may in its discretion enter judgment for such sum as the Court finds to be just, according to the circumstances of the case. The Court may also award BlenderBottle® its reasonable attorneys' fees for the necessity of bringing this claim in this exceptional case.

53. BlenderBottle® has been damaged by Defendant's conduct in an amount to be determined at trial.

54. Due to Defendant's actions, constituting false designation of origin, false or misleading statements, false or misleading description of fact, false or misleading representations of fact, passing off, and unfair competition, BlenderBottle® has suffered and continues to suffer great and irreparable injury, for which BlenderBottle® has no adequate remedy at law.

55. Defendant will continue its false designation of origin, false or misleading statements, false or misleading description of fact, false or misleading representations of fact, passing off, and unfair competition, unless and until Defendant is enjoined by this Court.

FOURTH CLAIM FOR RELIEF

(Violation of Nevada Uniform Deceptive Trade Practices Act and Nevada Common Law Unfair Competition)
(NRS 598)

56. BlenderBottle® hereby repeats, realleges, and incorporates by reference paragraphs 1-55 of this Complaint as though fully set forth herein

57. Defendant has engaged in acts violating Nevada law including, but not limited to,

1 trade dress infringement, false designation of origin, passing off, and federal unfair competition.
2 Such acts cause a likelihood of confusion and/or misunderstanding as to the source of its goods,
3 a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association
4 with genuine BlenderBottle® products.

5 58. Defendant's aforementioned acts constitute a willful violation of Nevada Uniform
6 Deceptive Trade Practices Act, NRS 598, *et seq* and Nevada Common Law.

7 59. Defendant's aforementioned acts have damages BlenderBottle® in an amount to
8 be determined at trial.

9 60. Defendant has irreparably injured BlenderBottle®. Such irreparable injury will
10 continue unless Defendant is preliminarily and permanently enjoined by this Court from further
11 violation of BlenderBottle®'s rights, for which BlenderBottle® has no adequate remedy at law.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, BlenderBottle® prays for judgment in its favor against Defendant for
14 the following relief;

15 A. An Order adjudging Defendant to have willfully infringed the Asserted Patents under
16 35 U.S.C. § 271;

17 B. That Defendant account for all gains, profits, and advantages derived through
18 Defendant's infringement of the Asserted Patents in violation of 35 U.S.C. § 271, and that
19 Defendant pay to BlenderBottle® all damages suffered by BlenderBottle® and/or Defendant's
20 total profits from such infringement pursuant to 35 U.S.C. §§ 284 and 289;

21 C. That the Court find for BlenderBottle® against Defendant on BlenderBottle®'s claim
22 of trade dress infringement, false designation of origin, passing off, violation of the Nevada
23 Uniform Deceptive Trade Practices Act, NRS 598, *et seq*, and unfair competition under Nevada
24 Common Law;

25 D. A preliminary and permanent injunction enjoining Defendant, its respective officers,
26 directors, agents, servants, employees, customers, and attorneys, and those persons in active
27 concert or participation with Defendant, from infringing United States Patent No. 10,165,877
28 and/or United States Design Patent Nos. D696,551, D748,478, D820,038, and/or D697,798 in

1 violation of 35 U.S.C. § 271, including, for example, through the manufacture, use, sale, offer for
 2 sale, and/or importation into the United States of Defendant's products accused of infringing
 3 United States Patent No. 10,165,877, and/or United States Design Patent Nos. D696,551,
 4 D748,478, D820,038, and/or D697,798, and any products that are not colorably different from
 5 these products;

6 E. That the Court issue a preliminary and permanent injunction against Defendant, its
 7 agents, servants, employees, representatives, successors, and assigns, and all persons, firms, or
 8 corporations in active concert or activities and from assisting or inducing, directly or indirectly,
 9 others to engage in the following activities:

- 10 1. manufacturing, importing, marketing, displaying, distributing, offering to
 11 sell, and/or selling Defendant's products infringing the Bottle Trade Dress
 12 or any products that are not colorably different therefrom;
- 13 2. using BlenderBottle®'s Bottle Trade Dress or any other trade dress that is
 14 confusingly similar to BlenderBottle®'s Bottle Trade Dress;
- 15 3. falsely designating the origin of Defendant's products;
- 16 4. passing off Defendant's products as those of BlenderBottle®;
- 17 5. misrepresenting by any means whatsoever, directly or indirectly, the source
 18 or sponsorship of any of Defendant's products;
- 19 6. unfairly competing with BlenderBottle® in any manner whatsoever; and
- 20 7. causing a likelihood of confusion or injuries to BlenderBottle®'s business
 21 reputation.

22 F. That an accounting be ordered to determine Defendant's profits resulting from its trade
 23 dress infringement, false designation or origin, passing off, and unfair competition;

24 G. That BlenderBottle® be awarded monetary relief in an amount to be fixed by the Court
 25 in its discretion as it finds just as an equitable remedy and as a remedy under 15 U.S.C. § 1117,
 26 including all damages sustained by BlenderBottle® as a result of Defendant's acts of trade dress
 27 infringement, false designation of origin, passing off, and unfair competition, all profits received
 28 by Defendant from sales and revenues of any kind made as a result of its infringing actions, and

1 the costs of this action. That such award of BlenderBottle® of damages and profits be trebled
2 pursuant to 15 U.S.C. § 1117;

3 H. An Order adjudging that this is an exceptional case under 15 U.S.C. § 1117 and/or 35
4 U.S.C. § 285;

5 I. An Order that Defendant's infringement is willful and a trebling of damages and/or
6 exemplary or punitive damages because of Defendant's willful conduct pursuant to
7 35 U.S.C. § 284;

8 J. An award to BlenderBottle® of the attorneys' fees, expenses, and costs incurred by
9 BlenderBottle® in connection with this action pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117,
10 and/or NRS 598.0999 and Nevada common law;

11 K. An award of pre-judgment and post-judgment interest and costs of this action against
12 Defendant; and,

13 L. Such other and further relief as this Court may deem just and proper.

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JURY DEMAND

Plaintiff Trove Brands, LLC, d/b/a The BlenderBottle Company hereby demands
a trial by jury on all issues so triable.

Dated: April 15, 2021

WEIDE & MILLER, LTD.

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